

# Exhibit A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

JOHN R. GAMMINO

Plaintiff

v.

SOUTHWESTERN BELL  
TELEPHONE, L.P.

Defendant

CIVIL ACTION  
NO. 3-05CV-0850

JURY TRIAL DEMANDED

**DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS**

Pursuant to the Court's Order of June 23, 2006, Plaintiff files this disclosure document and states as follows:

**A. Infringed Claims.**

Southwestern Bell Telephone, L.P. ("SWB") infringes Claims 1, 3-8, 10-15, 17-22, 24-29, 31-44, 47-49 of the '125 Patent and Claims 1-4 of the '650 Patent.

**B. Accused Instrumentality for Claim Nos. 1, 3-8, 10-15, 17-22, 24-29, 31-44, 47-49 of the '125 Patent and 1-4 of the 650 Patent.**

SWB has not provided information as to the specific apparatus, products, devices, processes, methods, acts, or other instrumentality that block international calls (except to admit that switches block calls by reading the first 10 digits of a dialing sequence such as 101xxx011). This is consistent with the Plaintiff's finding that phone testing shows that calls made on SWB phones are blocked based on the signals in the first plurality (101, for example) and third plurality (011, for example).

Attached as Exhibit A is a Claims Chart with Instrumentalities that shows the devices used for each element but it is subject to changes once SWB produces the requested discovery information on these issues.

Regarding the method, as an example, the Patents include receipt of a dialing sequence which includes a first, second and third plurality (101-xxxx-011, for example), and a call is prevented when the third plurality of signals are located to accomplish international dialing and are respective predetermined signals (for example, 011) which are used for international dialing irrespective of the second plurality (for example, xxxx). See Claim 1. Under Claim 3 (dependent of Claim 1), the method is the same as under Claim 1 with the additional element of the first plurality of dialing signals (for example, 101) being further respective predetermined signals.

**C. Location of Each Element of Each Asserted Claim.**

Attached as Exhibit A is a Claims Chart with Instrumentalities that shows the devices used for each element, but it is subject to change once SWB produces the requested discovery information on these issues.

**D. Literal Infringement.**

Each element of each claim is literally present in SWB's switches and phones. After SWB complies with discovery requests of Plaintiff, it could be determined if the doctrine of equivalents applies here.

**E. Priority Date.**

Both the '125 Patent and '650 Patents have a priority date of July 9, 1992.

**F. Apparatus, Product, Device.**

This section does not apply to Plaintiff.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Plaintiff's Disclosure of  
Asserted Claims and Infringement Contentions was sent by electronic mail and  
first class mail addressed as follows:

Roger Fulghum, Esquire  
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One Shell Plaza  
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Houston, TX 77002-4995

FLAMM, BOROFF & BACINE, P.C.

Date: July 10, 2006

  
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W. Mark Mullineaux  
Attorney for Plaintiff

# Exhibit “A”

**CLAIMS CHART WITH INSTRUMENTALITY**

The '125 Patent Elements	SWB's Infringement/[Accused Instrumentality]
<b>Claim 1</b>	
Means for receiving said dialing sequence [first, second and third plurality] prior to receiving said central office exchange code;	SWB receives the first ten dialed signals which may be 101xxxx011 which has a first (101), second (xxxx) and third (011) plurality and SWB receives those signals prior to receiving the central office exchange code. [Input Device or the like, Microprocessor or Microcontroller or PC System 360 or the like]
means for evaluating said third plurality of dialing signals	SWB evaluates the third plurality of dialing digits, which may be 011. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
and for preventing establishment of said telephone call if said evaluated third plurality of dialing signals are determined to a) be in a location in said dialing sequence to accomplish international dialing and b) be respective predetermined signals which are used for international dialing irrespective of said second plurality of dialing signals.	SWB prevents calls when the third plurality of signals is 011 and (a) 011 is located in the dialing sequence to accomplish international dialing and (b) 011 are predetermined signals which are used for international dialing irrespective of the second plurality of dialing signals (xxxx). [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
<b>Claim 3</b>	
Telecommunications apparatus according to claim 1, wherein said means for evaluating said third plurality of dialing signals includes means for evaluating said first plurality of dialing signals and for preventing establishment of said telephone call if said evaluated first plurality of dialing signals are determined to be further respective predetermined signals.	See Claim 1. Further, SWB prevents calls when the evaluated first plurality of dialing signals are determined to be further respective predetermined signals. For example, the call 101xxxx011+, 101 would be a predetermined first plurality of dialing signals. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
<b>Claim 4</b>	
Telecommunications apparatus according to claim 1, wherein said location in said dialing sequence to accomplish international dialing is an earliest location within said dialing sequence which indicates that said dialing sequence is for	See Claim 1. Further, SWB prevents calls when 011 is at a location which is an earliest location within the sequence which indicates that the dialing sequence is for accomplishing international dialing. As an example, in the call 101-xxxx-011+, 011

accomplishing international dialing.	occurs in the dialing sequence after the access code of 101 and the carrier code of xxxx and is in the first location in the dialing sequence that may indicate an international call.
Claim 5	
Telecommunications apparatus according to Claim 1, wherein said means for evaluating said third plurality of dialing signals identifies said first plurality of dialing digits and said second plurality of dialing digits in order to identify said third plurality of dialing digits.	See Claim 1. Further, SWB prevents calls when the means for evaluating the third plurality of dialing signals identifies the first plurality of dialing digits and the second plurality of dialing digits in order to identify the third plurality of dialing signals. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 6	
Telecommunications apparatus according to claim 1, wherein said respective predetermined signals which are used for international dialing are one of a) an international access code and b) an international area code.	See Claim 1. Further, SWB prevents calls when the predetermined signals are an international access code (as an example, "011") and an international area code (as an example, "809"). [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 7	
Telecommunications apparatus according to claim 5, wherein said means for evaluating said third plurality of dialing signals selectively prevents establishment of said telephone call by preventing said telecommunications apparatus from transmitting at least a portion of said dialing sequence.	See Claim 5. Further, SWB's evaluation of the third plurality selectively prevents establishment of the telephone call by preventing the telecommunications apparatus from transmitting at least a portion of the dialing sequence. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 8	
means for receiving said dialing sequence prior to receiving said central office exchange code;	SWB receives the first ten dialed signals, which may be 101xxxx011 which has a first (101), second (xxxx) and third (011) plurality and SWB receives those signals prior to receiving the central office exchange code. [Input Device or the like, Microprocessor or Microcontroller or PC System 360 or the like]
means for evaluating said third plurality of dialing signals in a location in said dialing	SWB evaluates the third plurality of dialing signals to determine if the third plurality of

sequence used for international dialing by determining if said third plurality of dialing signals are used to accomplish international dialing;	dialing signals is used to accomplish international dialing. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
means for transmitting said dialing sequence to said communications pathway if said evaluated third plurality of dialing signals are determined to not be predetermined signals which are used to accomplish international dialing irrespective of said second plurality of dialing signals.	SWB transmits the dialing sequence to a communications pathway if the third plurality of dialing signals are <u>not</u> predetermined signals which are used for international dialing (for example 011) irrespective of the second plurality of dialing signals. For example, if the third plurality of dialed signals was 011, SWB does not transmit the dialing sequence. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 10	
Telecommunications apparatus according to claim 8, wherein said means for transmitting said dialing sequence to said communications pathway transmits said dialing sequence to said communications pathway if said first plurality of dialing signals are determined to not be further predetermined signals.	See Claim 8. Further, SWB transmits the dialing sequence to the communications pathway if the first plurality of dialing signals is not determined to be further predetermined signals. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 11	
Telecommunications apparatus according to claim 8, wherein said location in said dialing sequence to accomplish international dialing is an earliest location within said dialing sequence which indicates that said dialing sequence is for accomplishing international dialing.	See Claim 8. Further, SWB transmits calls when the third plurality of dialing signals is determined to not be predetermined signals and is an earliest location within the dialing sequence which indicates that the dialing sequence is for accomplishing international calls. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 12	
Telecommunications apparatus according to claim 8, wherein said means for evaluating said third plurality of dialing signals identifies said first plurality of dialing digits and said second plurality of dialing digits in order to identify said third plurality of dialing digits.	See Claim 8. Further, SWB identifies the first plurality of dialing digits and the second plurality of dialing digits in order to identify the third plurality of dialing signals. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]



Claim 13	
Telecommunications apparatus according to claim 8, wherein said respective predetermined signals which are used for international dialing are one of a) an international access code and b) an international area code.	See Claim 8. Further, SWB prevents calls when the predetermined signals are an international access code (as an example, "011") and an international area code (as an example, "809"). [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 14	
Telecommunications apparatus according to claim 12, further comprising means for preventing said telecommunications apparatus from transmitting at least a portion of said dialing sequence to said communications pathway.	See Claim 12. Further, SWB prevents the telecommunications apparatus from transmitting at least a portion of the dialing sequence to the communications pathway. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 15	
means for transmitting said first signal value, said plurality of second signal values and said plurality of further signal values to said communications pathway prior to transmitting signal values corresponding to said central office exchange code;	SWB transmits the first signal value (101), plurality of second signal values (011) and plurality of further signal values (xxxx) to the communications pathway prior to signal values corresponding to the central office exchange code being transmitted to the communications pathway. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
means for evaluating said plurality of second signal values and for preventing establishment of said telephone call if said plurality of second signal values are determined to a) be in a location in said dialing sequence to accomplish international dialing and b) be used to accomplish international calling irrespective of said plurality of further signal values.	SWB prevents calls when a) the plurality of second signal values are 011 and located at a location in the dialing sequence to accomplish international dialing and b) 011 is used to accomplish international calling irrespective of the plurality of further signal values. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 17	
Telecommunications apparatus according to Claim 15, wherein said means for evaluating said plurality of second signal values further includes means for evaluating said first signal value and for preventing establishment of said telephone call if said first signal value at a	See Claim 15. Further, SWB prevents when the first signal value is at a predetermined location and is determined to be a predetermined signal value. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]

predetermined location in said sequence is determined to be a predetermined signal value.	
Claim 18	
Telecommunications apparatus according to Claim 15, wherein said location in said dialing sequence to accomplish international dialing is an earliest location within said dialing sequence which indicates that said dialing sequence is for accomplishing international dialing.	See Claim 15. Further, SWB prevents calls when 011 is at a location which is an earliest location within the sequence which indicates that the dialing sequence is for accomplishing international dialing. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 19	
Telecommunications apparatus according to Claim 15, wherein said means for evaluating said plurality of second signal values identifies first signal value and said plurality of further signal values in order to identify said plurality of second signal values.	See Claim 15. Further, SWB identifies the first signal value and the plurality of further signal values in order to identify the plurality of second signal values. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 20	
Telecommunications apparatus according to Claim 15, wherein said plurality of second signal values are determined to be used to accomplish international dialing if said plurality of second signal values are one of a) an international access code and b) an international area code.	See Claim 15. Further, SWB prevents calls when the predetermined signals are an international access code (as an example, "011") and an international area code (as an example, "809"). [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 21	
Telecommunications apparatus according to Claim 19, wherein said means for evaluating said plurality of second signal values prevents establishment of said telephone call by preventing said telecommunications apparatus from transmitting at least a portion of said dialing sequence.	See Claim 19. Further, SWB prevents the establishment of the telephone call by preventing its apparatus from transmitting at least a portion of the dialing sequence. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 22	
a) receiving said plurality of signal values;	SWB has a device that receives the plurality of signal values. [Input Device or the like, and Microprocessor or Microcontroller or PC System 360 or the like]

<p>b) comparing at least two of said plurality of signal values respectively located at predetermined locations used for international dialing with respective predetermined digit sequences which are used for international dialing and comparing a further signal value located at a further predetermined location with a further predetermined signal value, wherein a plurality of further signal values are located between said at least two of said plurality of signal values and said further signal value; and</p>	<p>SWB prevents calls when: 1) the plurality of signal values has a plurality of further signal values located between at least two of the plurality of signal values and the further signal value, and 2) at least two plurality of signal values located at predetermined locations for international dialing are compared with predetermined digit sequences used for international dialing, and 3) a further signal value located at a predetermined location is compared with a further predetermined signal value. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]</p>
<p>c) at least partially preventing operation of said telecommunications device irrespective of said plurality of signal values if said at least two of said plurality of signal values and any one of said respective predetermined digit sequences are found to be identical in step b) and if said further predetermined signal value is found to be identical to said further signal value.</p>	<p>SWB prevents calls when at least two of the plurality of signal values and any one of the respective predetermined digit sequences are identical and the predetermined signal value is identical to the further signal value, irrespective of the plurality of further signal values. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]</p>
<p>Claim 24</p>	
<p>A method according to Claim 22, wherein said predetermined locations used for international dialing are earliest locations within said plurality of signal values which indicates that said plurality of signal values are for accomplishing international dialing.</p>	<p>See Claim 22. Further, SWB prevents calls when the predetermined locations used for international dialing (011) are earliest locations within the plurality of signal values which indicates that the plurality of signal values are for accomplishing international dialing. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]</p>
<p>Claim 25</p>	
<p>A method according to Claim 22, further comprising the step of identifying said further signal value and said plurality of further signal values in order to identify said at least two of said plurality of signal values.</p>	<p>See Claim 22. Further, SWB identifies the further signal value and the plurality of further signal values in order to identify at least two of the plurality of signal values. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]</p>
<p>Claim 26</p>	
<p>A method apparatus according to Claim</p>	<p>See Claim 22. Further, SWB prevents</p>

22, wherein said respective predetermined signals which are used for international dialing are one of a) an international access code and b) an international area code.	calls when signals are an international access code (as an example, "011") or an international area code (as an example "809"). [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 27	
The method of Claim 22, wherein each of said plurality of signal values corresponds to one of the characters 1, 2, 3, 4, 5, 6, 7, 8, 9, 0, # and *.	See Claim 22. Further, SWB prevents calls when each of the plurality of signal values corresponds to one of the characters 1, 2, 3, 4, 5, 6, 7, 8, 9, 0, # and *. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 28	
The method of Claim 22, wherein said telecommunications device is coupled to a telecommunications pathway and wherein operation of said telecommunications device is at least partially prevented by severing a connection between said telecommunications device and said telecommunications pathway.	See Claim 22. Further, SWB prevents calls when the telecommunications device is coupled to telecommunications pathway and a connection is severed between the device and the pathway. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 29	
a) receiving said dialing sequence;	SWB receives first, second and third pluralities. [Input Device or the like, and Microprocessor or Microcontroller or PC System 360 or the like]
b) evaluating said third plurality of dialing signals;	SWB evaluates the third plurality of dialing signals. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
c) at least partially preventing operation of said telecommunications device irrespective of said second plurality of dialing signals if said evaluated third plurality of dialing signals are determined to a) be in location in said dialing sequence to accomplish international dialing and b) be one of a plurality of respectively predetermined digit sequences which are used for international dialing; and	SWB partially prevents operation of telecommunications device irrespective of the second plurality, if the third plurality of dialing signals are in a location in a dialing sequence to accomplish international dialing and are one of a plurality of respectively predetermined digit sequences used for international dialing. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
d) transmitting said dialing sequence to	SWB transmits the dialing sequence to the

said communications pathway if said evaluated third plurality of dialing signals is not determined to be any one of said plurality of respectively predetermined digit sequences which is used for international dialing.	communications pathway if the third plurality of dialing signals is not one of a plurality of respectively predetermined digit sequences which is used for international dialing. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 31	
A method of controlling the operation of a telecommunications device according to Claim 29, wherein step (b) further includes the step of evaluating said first plurality of dialing signals and step (c) includes the step of at least partially preventing operation of said telecommunications device if said evaluated first plurality of dialing signals are determined to be a further respectively predetermined digit sequence.	See Claim 29. Further, SWB at least partially prevents the operation of the device when the first plurality of dialing signals are determined to be a further respectively predetermined digit sequence. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 32	
A method according to Claim 29, wherein said location in said dialing sequence to accomplish international dialing is an earliest location within said dialing sequence which indicates that said dialing sequence is for accomplishing international dialing.	See Claim 29. Further, SWB controls the operation of the device when the location is an earliest location within the dialing sequence which indicates that the dialing sequence is for accomplishing international dialing. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 33	
A method according to Claim 29, further comprising the step of identifying said first plurality of dialing signals and said second plurality of dialing signals in order to identify said third plurality of dialing signals.	See Claim 29. Further, SWB identifies the first plurality of dialing signals and second plurality of dialing signals in order to identify the third plurality of dialing signals. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 34	
A method according to Claim 29, wherein said plurality of respectively predetermined digits sequences which are used for international dialing are one of a) an international access code and b) an international area code.	See Claim 29. Further, the predetermined signals are an international access code (as an example "011") and an international area code (as an example "809"). [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]

Claim 35	
a) receiving a plurality of signal values which are entered into said telecommunications device, wherein said plurality of signal values include a first group of signal values followed by a second group of signal values followed by a third group of signal values;	SWB receives a plurality of dialing signals entered into a telecommunications device wherein the plurality of signal values include a first group of signal values followed by a second group of signal values followed by a third group of signals values. [Input Device or the like, and Microprocessor or Microcontroller or PC System 360 or the like]
b) comparing said received third group of signal values with a plurality of first test signal value sequences which are used for international dialing; and	SWB compares the third group of signal values (011 as an example) with a plurality of first test signal value sequences. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
c) at least partially preventing use of said telecommunications device if said third group of signal values is a) in a location within said plurality of signal values which is used to accomplish international dialing and b) found to be identical to said plurality of first test signal value sequences irrespective of said second group of signal values.	SWB at least partially prevents the use of the device when the third group of signal values are located in a position used to accomplish international dialing and determined to be identical to the plurality of first test signal value sequences irrespective of the second group of signal values. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 36	
The method of Claim 35, wherein each of said signal values corresponds to one of the characters 1, 2, 3, 4, 5, 6, 7, 8, 9, 0, # and *.	See Claim 35. Further, SWB prevents calls when each of the signal values corresponds to one of the characters 1, 2, 3, 4, 5, 6, 7, 8, 9, 0, # and *. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 37	
The method of Claim 35, wherein said telecommunications device is coupled to a telecommunications pathway and wherein operation of said telecommunications device is at least partially prevented by severing a connection between said telecommunications device and said telecommunications pathway.	See Claim 35. Further, SWB prevents calls when the telecommunications device is coupled to telecommunications pathway and a connection is severed between the device and the pathway. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 38	
A method for at least partially preventing	See Claim 35. Further, SWB compares

use of a telecommunications device according to Claim 35, wherein step (b) includes the step of comparing said received first group of signal values with a plurality of second test signal value sequences and step (c) includes the step of at least partially preventing use of said telecommunications device if said first group of signal values is found to be identical to said plurality of second test signal value sequences.	the first group of signal values with a plurality of second test signal value sequences and partially prevents the use of the device if the first group is found identical to the plurality of second test signal value sequences. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 39	
A method according to Claim 35, wherein said location within said plurality of signal values which is used to accomplish international dialing is an earliest location within said plurality of signal values which indicates that said plurality of signal values is for accomplishing international dialing.	See Claim 35. Further, SWB prevents calls when the plurality of signal values is used to accomplish international dialing and is in an earliest location within the plurality which indicates the plurality is for accomplishing international dialing. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 40	
A method according to Claim 35, further comprising the step of identifying said first group of signal values and said second group of signal values in order to identify said third group of signal values.	See Claim 35. Further, SWB identifies the first group of signal values and second group of signal values in order to identify the third group of signal values. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 41	
A method according to Claim 35, wherein said plurality of first test signal value sequences which are used for international dialing are one of a) an international access code and b) an international area code.	See Claim 35. Further, the predetermined signals are an international access code (as an example "011") or an international area code (as an example "809"). [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 42	
means for interposing said apparatus between said telecommunications device and said further telecommunications device;	SWB interposes the apparatus between telecommunications devices. [PBX System or the like]
means for receiving a plurality of signals which are transmitted from said telecommunications device prior to said	SWB receives a plurality of signals from a telecommunication device prior to the device transmitting signals of a central

telecommunications device transmitting a further plurality of signals corresponding to a central office exchange code, said plurality of signals comprising a first plurality of signals followed by a second plurality of signals followed by a third plurality of signals;	office code and the signals received are of a first plurality of signals (101), second plurality of signals (xxxx), and third plurality of signals (011). [Microprocessor or Microcontroller or PC System 360 or the like]
prevention means for selectively preventing communications between said telecommunications device and said further telecommunications device is said third plurality of signals are determined to a) be in a location within said plurality of signals which is used for accomplishing international dialing and b) include ones of a plurality of test signals which are used for accomplishing international dialing irrespective of said second plurality of signals.	SWB prevented communications between telecommunication devices if the third plurality is a) in a location for accomplishing international dialing and b) included ones of a plurality of test signals used for accomplishing international dialing irrespective of the second plurality of digits. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 43	
The apparatus of Claim 42, wherein each of said signals corresponds to one of the characters 1, 2, 3, 4, 5, 6, 7, 8, 9, 0, # and *.	See Claim 42. Further, SWB prevents calls when each of said signals corresponds to one of the characters 1, 2, 3, 4, 5, 6, 7, 8, 9, 0, # and *. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 44	
The apparatus of Claim 42, wherein said telecommunications device is coupled to a telecommunications pathway and wherein said prevention means includes means for severing a connection between said telecommunications device and said telecommunications pathway.	See Claim 42. Further, SWB prevents calls when the telecommunications device is coupled to telecommunications pathway and a connection is severed between the device and the pathway. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 47	
Apparatus according to Claim 42, wherein said prevention means selectively prevents communications between said telecommunications device and said further telecommunications device if said third plurality of signals are determined to be at an earliest location within said plurality of signals which indicates that said plurality of signals are for accomplishing	See Claim 42. SWB selectively prevents communications between a telecommunications device and a further telecommunications device if the third plurality of signals (011) are determined to be at an earliest location within the plurality of signals which indicates that the plurality of signals are for accomplishing international dialing. [Program Memory or



international dialing.	the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 48	
Apparatus according to Claim 42, wherein said prevention means identifies said first plurality of signals and said second plurality of signals in order to identify said third plurality of signals.	See Claim 42. Further, SWB identifies the first plurality of signals, and the second plurality of signals in order to identify the third plurality of signals. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 49	
Apparatus according to Claim 42, wherein said second plurality of test signals which are used for accomplishing international dialing are one of a) an international access code and b) an international area code.	See Claim 42. Further, the predetermined signals are an international access code (as an example "011") and an international area code (as an example "809"). [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]

**CLAIMS CHART WITH INSTRUMENTALITY**

The '650 Patent	SWB's Infringement/[Accused Instrumentality]
<b>Claim 1</b>	
Telecommunications apparatus for selectively preventing establishment of a telephone call to a telephone number having a central office exchange code, said telecommunications apparatus being capable of transmitting a dialing sequence which includes a first plurality of dialing signals, followed by a second plurality of dialing signals followed by a third plurality of dialing signals, wherein said telephone call is placed through a telecommunications switch, said telecommunications apparatus comprising:	SWB apparatus places a telephone call, through a telecommunications switch, to a telephone number having a central office exchange code, and is capable of transmitting a dialing sequence which includes a first plurality of dialing signals (as an example "101") followed by a second plurality of dialing signals (as an example "xxxx") followed by a third plurality of dialing signals (as an example "011"). (Preamble)
means for receiving said dialing sequence prior to receiving said central office exchange code;	SWB receives the dialing sequence prior to receiving the central office exchange code. [Input Device or the like and Microprocessor or Microcontroller or PC System 360 or the like]
means for evaluating said third plurality of dialing signals and for preventing said telecommunications switch from establishing said telephone call if said evaluated third plurality of dialing signals are determined to a) be in a location in said dialing sequence to accomplish international dialing and b) be respective predetermined signals which are used for international dialing irrespective of said second plurality of dialing signals.	SWB prevents the switch from establishing calls when the third plurality of signals (as an example "011") (a) are located in the dialing sequence to accomplish international dialing and (b) are respective predetermined signals which are used for international dialing irrespective of the second plurality of dialing signals (as an example "xxxx"). [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
<b>Claim 2</b>	
Telecommunications apparatus according to Claim 1, wherein said means for evaluating said third plurality of dialing signals includes means for evaluating said first plurality of dialing signals and for preventing said telecommunications switch from establishing said telephone call if said evaluated third plurality of dialing signals are determined to be respective predetermined signals which are used for	See claim 1. Further, SWB prevents the switch from establishing calls when the third plurality of dialing signals are determined to be respective predetermined signals used for international dialing (as an example "011") and the first plurality of dialing signals are determined to be further respective predetermined signals (as an example "101"). [Program Memory or the like and Microcontroller or Microprocessor

international dialing and if said evaluated first plurality of dialing signals are determined to be further respective predetermined signals.	or PC System 360 or the like]
Claim 3	
a) receiving said sequence prior to receiving signal values corresponding to said central office exchange code;	SWB receives the dialing sequence which includes a first plurality of dialing signals (as an example "101") followed by a second plurality of dialing signals (as an example "xxxx") followed by a third plurality of dialing signals (as an example "011") prior to receiving signal values corresponding to the central office exchange code. [Input Device or the like and Microprocessor or Microcontroller or PC System 360 or the like]
b) evaluating said third plurality of digits;	SWB evaluates the third plurality of digits. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
c) preventing said telecommunications switch from establishing said telephone call if said evaluated third plurality of digits are determined to a) be in a location in said dialing sequence to accomplish international dialing and b) be a respectively predetermined digit sequence which is used for international dialing, irrespective of said second plurality of digits and	SWB prevents the telecommunications switch from establishing calls when the third plurality of digits are in a location to accomplish international dialing and are a predetermined digit sequence used for international dialing irrespective of the second plurality of digits. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
d) allowing said telecommunications switch to establish said telephone call if said evaluated digits are not determined to be respectively predetermined digit sequences.	SWB allows the telecommunications switch to establish calls when the third plurality of digits are not selectively predetermined digit sequences. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
Claim 4	
A method of controlling the operation of a telecommunications switch according to Claim 3, wherein step (b) includes the step of evaluating first said plurality of digits and step (c) includes the step of preventing said telecommunications switch from establishing said telephone call if said third	See Claim 3. Further, SWB prevents the telecommunications switch from establishing calls when the third plurality of digits are determined to be respectively predetermined digit sequences used for international dialing and the first plurality of digits are determined to be further

plurality of digits are determined to be said respectively predetermined digit sequence which is used for international dialing and said first plurality of digits are determined to be a further respectively predetermined digit sequence.	respectively predetermined digit sequences. [Program Memory or the like and Microcontroller or Microprocessor or PC System 360 or the like]
--	---

# Exhibit B

1 do or change that a little bit, I'm willing to think about  
2 that. Okay?

3 All right. Let's see.

4 All those, that's all the discovery issues.

5 Okay. I've got your claims construction chart. I kind  
6 of want to start by telling you this: Do y'all think that  
7 we can get the claims down to any fewer, ever? Or is this  
8 as few as you think it will ever get? Kind of your feelings  
9 about that. I don't know.

10 Maybe plaintiff may have a better feeling about that,  
11 Mr. Mullineaux, than I do -- I mean, than the defense does.

12 MR. MULLINEAUX: Well, now, my feeling is I  
13 certainly would like to have less claims at issue.

14 We went through extensive periods of discussions back  
15 and forth over the phone, and this is the result of it.

16 A couple of days ago, myself and Mr. Fulghum talked  
17 about this specific issue. And the conclusion was that we  
18 are not able to eliminate any of the claims. And my thought  
19 was the only ways we could eliminate one of the terms,  
20 anyway, would be if we could come to an agreement on what  
21 that term would mean. And we were just unable to do that.

22 THE COURT: Here's one thought that I had. And  
23 just think about this, I'm not trying to box you into that.

24 It's just, we can't submit to a jury 40 different  
25 claims. We just can't -- I mean, they just can't do it.

1           Maybe they can do that up north, but down here in  
2     Dallas it just doesn't work. We've got to get it down to  
3     about five or six, or maybe a few more, but that's about it.  
4     We just can't submit 40 different things.

5           Why can't we group them?

6           You know, it seems to me some of these are, kind of, is  
7     the same with regard to that and there may be a way to do  
8     that.

9           Is it possible that, maybe?

10          You would still get the questions answered that you  
11     want but you wouldn't have to answer that question umpteen  
12     times.

13          Maybe? Maybe not? No?

14                 MR. MULLINEAUX: Well, I think in the joint  
15     construction document, I think, there is a grouping, like  
16     you would have --

17                 THE COURT: Right.

18                 MR. MULLINEAUX: -- section 11 A, B, C, D, and E.

19                 So we did that.

20                 I mean, I'm always in favor of trying to make things  
21     concise and to the point.

22                 One thing that we have not told Your Honor, which we  
23     have just recently decided, is that we will not be pursuing  
24     claim A and the claims dependent on claim A.

25                 THE COURT: Okay. Is that what you were going to

# Exhibit C



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

JOHN R. GAMMINO

Plaintiff

v.

SOUTHWESTERN BELL  
TELEPHONE, L.P.

Defendant

CIVIL ACTION  
NO. 3-05CV-0850

JURY TRIAL DEMANDED

**AMENDED DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT  
CONTENTIONS OF PLAINTIFF, JOHN R. GAMMINO**

Pursuant to the Court's Orders entered June 26, 2006, and September 19, 2006, Plaintiff files this amended disclosure document and states as follows:

**A. INFRINGED CLAIMS**

Southwestern Bell Telephone, L.P. ("SWB") infringes Claims 1, 3-7, 15, 17-21, 29, 31-34, 42-44, 47-49 of U.S. Patent No. 5,809,125 ("the '125 Patent") and Claims 1-4 of U.S. Patent No. 5,812,650 ("the '650 Patent").

**B. ACCUSED INSTRUMENTALITIES**

The Accused Instrumentalities set forth below infringe and apply to every claim set forth in Section A above. Section 5 below and the Claims Charts referenced in that section disclose the infringement of each element of each claim. Infringement is claimed for the period of September 15, 1998 to the present.

**1. Products/Apparatus**

The following products and apparatuses of SWB infringe the claims set forth in Section A above:

- a. Lucent 5E Switches
- b. Lucent 1A Switches
- c. Nortel DMS 100 Switches
- d. Ericsson Switches
- e. Public Smart Telephones with Universal Service Operating Code ("USOC") USOC "ELCO1"
- f. Public Smart Telephones with USOC "CWEBA"
- g. Public Smart Telephones identified on Documents SWB003812-SWB003917
- h. Pay Telephones registered with Dialing Plans 09, 10, and 76

**2. Services**

SWB's service that infringes the claims set forth in Section A above is its international call blocking service, including, but not limited to:

- a. SWB International Call Blocking Service – IDDD Direct
- b. Dialing Plans 09, 10, and 76
- c. Telephone lines and other devices that block calls with the with the following SWB USOCs: 112, 852, 11K, 11Z, 12K, 12T, 12Y 12Z, 15G, 15Y, 17O, 17W, 19Q, 19W, 1CC, 1FY, 1GP, 1GZ, 1MC, 1N8, 1NC, 1PC, 1PD, 1PN, 1PQ, 1PT, 1QL, 1SP, 1UC, 1UZ, D2U, DBN, DD8, DDC, DGO, F26, G7N, TGR

**3. Devices**

The interior components of SWB Switches and Pay Telephones that correlate to the following general terms infringe the claims set forth in Section A above.

- a. Microprocessor/Microcontroller
- b. Program Memory
- c. Input Device
- d. Decoder
- e. PC System

f. DTMF Detector

Specific brand names and/or model numbers cannot be identified with particularity because, among other things, SWB refuses to produce a witness to testify on such subjects pursuant to Plaintiff's Rule 30(b)(6) Notice of Deposition. Plaintiff has filed a Motion to Compel SWB to produce a witness to testify about the information included in the Notice. See Plaintiff's Motion to Compel attached hereto as Exhibit 3.

**4. Methods**

The following methods used by SWB to block international calls infringe the claims set forth in Section A above:

a. SWB infringes when it blocks international calls using the method of preventing calls when the third plurality of dialing signals is 011 and located to accomplish international dialing and are predetermined signals which are used for international dialing irrespective of the second plurality of dialing signals.

b. SWB infringes when it blocks international calls using the method of preventing calls when the third plurality of dialing signals is 011 and located to accomplish international dialing and are predetermined signals which are used for international dialing irrespective of the second plurality of dialing signals and the first plurality of dialing signals (101 for example) are further respective predetermined signals.

c. SWB infringes when using other methods covered by an infringed claim and each infringed claim and the basis for SWB's infringement are set forth in the Claims Charts attached hereto as Exhibits 1 and 2.

d. Further evidence of infringement is contained in the deposition testimony of Mr. Pharris and Mr. Tamasi and the expert reports of Mr. Tolsdorf, Mr. Tamasi and Mr. Occhiogrosso.

**5. Separate Disclosure For Each Claim**

Attached hereto as Exhibits 1 and 2 are Claims Charts with Instrumentalities for the '125 Patent and '650 Patents, respectively, that show how SWB infringes each claim and the instrumentalities that infringe each element of each claim. The charts refer to SWB's Public Telephones, Switches, Input Devices, Decoders, Program Memories, and Microprocessors or Microcontrollers or PC Systems 360. SWB's Switches at issue include Lucent 5E Switches, Lucent 1A Switches, Nortel DMS 100 Switches and/or Ericsson Switches. SWB's Public Telephones at issue include all public payphones owned and operated by SWB, including SWB's smart phones, ELCO1 phones, CWEBA phones, and all phones listed on SWB003812-SWB003917.

**6. SWB's Failure To Disclose Information**

SWB has disclosed the method of blocking international calls on its switches. SWB has not disclosed methods of international call blocking on its public payphones, PBX devices, Centrex devices, residential lines and business lines. SWB has not disclosed the amount of public phones owned or operated by

SWB at any time. SWB has not disclosed the amount of PBX devices, Centrex devices, residential lines and business lines using international call blocking.<sup>1</sup>

As a result of SWB's failure to disclose the information, Plaintiff is limited by that lack of information in providing this Disclosure and in presenting his case and damages at trial.

**C. Location Of Each Element Of Each Asserted Claim.**

Attached as Exhibits 1 and 2 are Claims Charts with Instrumentalities for the '125 Patent and '650 Patents, respectively, that show how SWB infringes each claim and the instrumentalities that infringe each element of each claim. The charts refer to SWB's Public Telephones, Switches, Input Devices, Decoders, Program Memories, and Microprocessors or Microcontrollers or PC Systems 360. SWB's Switches at issue include Lucent 5E Switches, Lucent 1A Switches, Nortel DMS 100 Switches and/or Ericsson Switches. SWB's Public Telephones at issue include all public payphones owned and operated by SWB, including SWB's smart phones, ELCO1 phones, CWEBA phones, and all phones listed on SWB003812-SWB003917.

**D. Literal Infringement.**

Each element of each claim identified above is literally present in the above-mentioned instrumentalities, either individually or jointly with other instrumentalities.

**E. Priority Date.**

Both the '125 Patent and '650 Patents have a priority date of July 9, 1992.

**F. Identification of Plaintiff's Own Apparatus, Product, Device (If Any).**

---

<sup>1</sup> Plaintiff will try again to resolve these issues with SWB and if necessary file a motion.

This section does not apply to Plaintiff.

FLAMM, BOROFF & BACINE, P.C.  
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s/Joseph R. Carnicella  
W. Mark Mullineaux  
Mark B. Schoeller  
Joseph R. Carnicella  
Attorneys for Plaintiff

Date: October 20, 2006

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

JOHN R. GAMMINO

Plaintiff

v.

SOUTHWESTERN BELL  
TELEPHONE, L.P.

Defendant

CIVIL ACTION  
NO. 3-05CV-0850

JURY TRIAL DEMANDED

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was  
sent via electronic mail to:

Roger Fulghum, Esquire  
Baker Botts  
One Shell Plaza  
910 Louisiana  
Houston, TX 77002-4995

I further certify that a courtesy copy was mailed to:

The Honorable Ed Kinkeade  
United States District Court for  
Northern District of Texas  
1100 Commerce Street  
Room 1625  
Dallas, Texas 75242-1003

FLAMM, BOROFF & BACINE, P.C.

s/Joseph R. Carnicella

W. Mark Mullineaux  
Mark B. Schoeller  
Joseph R. Carnicella  
Attorneys for Plaintiff

Date: October 20, 2006

# **EXHIBIT I**



**CLAIMS CHART WITH ACCUSED INSTRUMENTALITIES**

The term SWB Switch includes Lucent 5E Switches, Lucent 1A Switches, Nortel DMS 100 Switches, Ericsson Switches and/or PBX devices owned and/or operated by SWB.

The term Public Telephone includes all public payphones owned and operated by SWB, including Smart phones, ELCO1 phones, CWEBA phones, and all phones listed on SWB003812-SWB003917.

The instrumentalities set forth below include the instrumentalities listed and similar instrumentalities.

The '125 Patent	SWB's Infringement and Accused Instrumentalities
Claim 1	
Telecommunications apparatus for selectively preventing establishment of a telephone call to a telephone number having a central office exchange code, said telecommunications apparatus being capable of transmitting a dialing sequence which includes a first plurality of dialing signals followed by a second plurality of dialing signals followed by a third plurality of dialing signals, said telecommunications apparatus comprising:	SWB provides services that prevent international telephone calls ( <u>See</u> Plaintiff's Amended Disclosure of Claims and Infringement Contentions at ¶ B2). The switch, through which a telephone call is placed, receives a dialing sequence. In the switch, the method then analyzes the dialing sequence, i.e. it analyzes a first plurality, a second plurality, and a third plurality, prior to a central office exchange code, and prevents calls according to the elements set forth below.  Phone testing conducted on SWB pay telephones demonstrates that international telephone calls placed with the dialing sequence 101-xxxx-011+ are prevented, and thus, SWB pay telephones are included within the international call blocking services.
means for receiving said dialing sequence prior to receiving said central office exchange code;	SWB receives the dialing sequence (101-xxxx-011) prior to the central office exchange code. The instrumentalities include: Public Telephone and/or SWB Switch, Input Device, Decoder, and Microprocessor or Microcontroller or PC System 360.
means for evaluating said third plurality of dialing signals	SWB evaluates the third plurality of dialing signals. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.

and means for preventing establishment of said telephone call if said evaluated third plurality of dialing signals are determined to a) be in a location in said dialing sequence to accomplish international dialing and b) be respective predetermined signals which are used for international dialing irrespective of said second plurality of dialing signals.	SWB prevents calls when the third plurality of signals is 011 and (a) 011 is located in the dialing sequence to accomplish international dialing and (b) 011 is a predetermined signal which is used for international dialing irrespective of the second plurality of dialing signals. Test results demonstrate that SWB prevents calls irrespective of the second plurality. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
Claim 3	
Telecommunications apparatus according to claim 1, wherein said means for evaluating said third plurality of dialing signals includes means for evaluating said first plurality of dialing signals and for preventing establishment of said telephone call if said evaluated first plurality of dialing signals are determined to be further respective predetermined signals.	See Claim 1. Further, SWB prevents calls when the first plurality of dialing signals are determined to be further respective predetermined signals. For the call 101-xxxx-011+, 101 is a predetermined first plurality of dialing signals. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
Claim 4	
Telecommunications apparatus according to claim 1, wherein said location in said dialing sequence to accomplish international dialing is an earliest location within said dialing sequence which indicates that said dialing sequence is for accomplishing international dialing.	See Claim 1. Further, SWB prevents calls when 011 is located at the earliest location in the dialing sequence at a location which indicates that the dialing sequence is for accomplishing international dialing. For the call 101-xxxx-011+, 011 occurs in the dialing sequence after the access code of 101 and the carrier code of xxxx and is in the first location in the dialing sequence that indicates an international call. The instrumentalities include: Public Telephone and/or SWB Switch, Input Device, Decoder, and Microprocessor or Microcontroller or PC System 360.
Claim 5	
Telecommunications apparatus according to Claim 1, wherein said means for evaluating said third plurality of dialing signals identifies said first plurality of dialing digits and said second plurality of dialing digits in order to identify said third plurality of dialing digits.	See Claim 1. Further, SWB analyzes the first plurality and second plurality in order to analyze the third plurality. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.

Claim 6	
Telecommunications apparatus according to claim 1, wherein said respective predetermined signals which are used for international dialing are one of a) an international access code and b) an international area code.	See Claim 1. Further, the predetermined signals are one of an international access code ("011") and an international area code. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
Claim 7	
Telecommunications apparatus according to claim 5, wherein said means for evaluating said third plurality of dialing signals selectively prevents establishment of said telephone call by preventing said telecommunications apparatus from transmitting at least a portion of said dialing sequence.	See Claim 5. Further, SWB prevents calls after it analyzes the third plurality of dialing signals and prevents the apparatus from transmitting at least a portion of the dialing sequence. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
Claim 15	
Telecommunications apparatus for preventing establishment of a telephone call to a telephone number having a central office exchange code which occurs over a communications pathway, said telecommunications apparatus being capable of transmitting a dialing sequence corresponding to said telephone number which includes a first signal value, a plurality of second signal values, and a plurality of further signal values interposed between said first signal value and said plurality of second signal values, said telecommunications apparatus comprising:	SWB prevents calls on dialing sequences with a first signal value (101), a plurality of second signal values (011), and a plurality of further signal values interposed between said first signal value and said plurality of second signal values (xxxx).
means for transmitting said first signal value, said plurality of second signal values and said plurality of further signal values to said communications pathway prior to transmitting signal values corresponding to said central office exchange code;	SWB transmits the first signal value, the plurality of second signal values, and the plurality of further signal values to the communications pathway prior to signal values corresponding to the central office exchange code being transmitted to the communications pathway. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
means for evaluating said plurality of second signal values and for preventing	SWB prevents calls when a) the plurality of second signal values is 011 and located at

establishment of said telephone call if said plurality of second signal values are determined to a) be in a location in said dialing sequence to accomplish international dialing and b) be used to accomplish international calling irrespective of said plurality of further signal values.	a location in the dialing sequence to accomplish international dialing and b) 011 is used to accomplish international calling irrespective of the plurality of further signal values. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
Claim 17	
Telecommunications apparatus according to Claim 15, wherein said means for evaluating said plurality of second signal values further includes means for evaluating said first signal value and for preventing establishment of said telephone call if said first signal value at a predetermined location in said sequence is determined to be a predetermined signal value.	See Claim 15. Further, SWB prevents calls when the first signal value (101) is at a predetermined location and is determined to be a predetermined signal value. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
Claim 18	
Telecommunications apparatus according to Claim 15, wherein said location in said dialing sequence to accomplish international dialing is an earliest location within said dialing sequence which indicates that said dialing sequence is for accomplishing international dialing.	See Claim 15. Further, SWB prevents calls when 011 is located at an earliest location within the sequence which indicates that the dialing sequence is for accomplishing international dialing. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
Claim 19	
Telecommunications apparatus according to Claim 15, wherein said means for evaluating said plurality of second signal values identifies first signal value and said plurality of further signal values in order to identify said plurality of second signal values.	See Claim 15. Further, SWB identifies the first signal value (101) and the plurality of further signal values (xxxx) in order to identify the plurality of second signal values (011). The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
Claim 20	
Telecommunications apparatus according to Claim 15, wherein said plurality of second signal values are determined to be used to accomplish international dialing if said plurality of second signal values are one of a) an international access code and	See Claim 15. Further, SWB prevents calls when the plurality of second signal values is one of an international access code ("011") and an international area code. The instrumentalities include: Public Telephone and/or SWB Switch, Program

b) an international area code.	Memory, and Microcontroller or Microprocessor or PC System 360.
Claim 21	
Telecommunications apparatus according to Claim 19, wherein said means for evaluating said plurality of second signal values prevents establishment of said telephone call by preventing said telecommunications apparatus from transmitting at least a portion of said dialing sequence.	See Claim 19. Further, SWB prevents the establishment of the telephone call by preventing its apparatus from transmitting at least a portion of the dialing sequence. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
Claim 29	
A method of controlling the operation of a telecommunications device being capable of transmitting a dialing sequence which includes a first plurality of dialing signals, followed by a second plurality of dialing signals followed by a third plurality of dialing signals prior to transmitting a central office exchange, said method comprising the steps of:	SWB's call prevention method controls the operation of its telecommunications devices based on receiving the dialing sequence of 101-xxxx-011+.
a) receiving said dialing sequence;	SWB's call prevention method receives a first plurality, a second plurality and a third plurality. The instrumentalities include: Public Telephone and/or SWB Switch, Input Device, Decoder and Microprocessor or Microcontroller or PC System 360.
b) evaluating said third plurality of dialing signals;	SWB's call prevention method evaluates the third plurality of dialing signals. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
c) at least partially preventing operation of said telecommunications device irrespective of said second plurality of dialing signals if said evaluated third plurality of dialing signals are determined to a) be in location in said dialing sequence to accomplish international dialing and b) be one of a plurality of respectively predetermined digit sequences which are used for international dialing; and	SWB's method partially prevents the operation of telecommunications device if 011 is in a location in a dialing sequence to accomplish international dialing. 011 is one (the only one) of a plurality of respectively predetermined digit sequences which are used for international dialing. Test results demonstrate that SWB prevents calls irrespective of the second plurality. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and

	Microcontroller or Microprocessor or PC System 360.
d) transmitting said dialing sequence to said communications pathway if said evaluated third plurality of dialing signals is not determined to be any one of said plurality of respectively predetermined digit sequences which is used for international dialing.	SWB's method transmits the dialing sequence to the communications pathway if the third plurality of dialing signals is not 011. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
Claim 31	
A method of controlling the operation of a telecommunications device according to Claim 29, wherein step (b) further includes the step of evaluating said first plurality of dialing signals and step (c) includes the step of at least partially preventing operation of said telecommunications device if said evaluated first plurality of dialing signals are determined to be a further respectively predetermined digit sequence.	See Claim 29. Further, SWB partially prevents the operation of the device when the first plurality of dialing signals is determined to be 101. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
Claim 32	
A method according to Claim 29, wherein said location in said dialing sequence to accomplish international dialing is an earliest location within said dialing sequence which indicates that said dialing sequence is for accomplishing international dialing.	See Claim 29. Further, SWB controls the operation of the device when 011 is at an earliest location within the dialing sequence which indicates that the dialing sequence is for accomplishing international dialing. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
Claim 33	
A method according to Claim 29, further comprising the step of identifying said first plurality of dialing signals and said second plurality of dialing signals in order to identify said third plurality of dialing signals.	See Claim 29. Further, SWB identifies the first plurality of dialing signals and second plurality of dialing signals in order to identify the third plurality of dialing signals. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
Claim 34	
A method according to Claim 29, wherein said plurality of respectively predetermined digits sequences which are used for international dialing are one of a) an	See Claim 29. Further, the predetermined signals are one of an international access code ("011") and an international area code. The instrumentalities include: Public

international access code and b) an international area code.	Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
Claim 42	
Apparatus, for use with a telecommunications device, for selectively preventing communications between said telecommunications device and a further telecommunications device, said apparatus comprising:	
means for interposing said apparatus between said telecommunications device and said further telecommunications device;	SWB interposes the apparatus between telecommunications devices. The instrumentalities include: Public Telephone and/or SWB Switch, and PBX System.
means for receiving a plurality of signals which are transmitted from said telecommunications device prior to said telecommunications device transmitting a further plurality of signals corresponding to a central office exchange code, said plurality of signals comprising a first plurality of signals followed by a second plurality of signals followed by a third plurality of signals;	SWB receives a plurality of signals, which include a first plurality (101), a second plurality (xxxx), and a third plurality (011) from a telecommunication device prior to the device transmitting signals of a central office code. The instrumentalities include: Public Telephone and/or SWB Switch, Input Device, Decoder and Microprocessor or Microcontroller or PC System 360.
prevention means for selectively preventing communications between said telecommunications device and said further telecommunications device is said third plurality of signals are determined to a) be in a location within said plurality of signals which is used for accomplishing international dialing and b) include ones of a plurality of test signals which are used for accomplishing international dialing irrespective of said second plurality of signals.	SWB prevents communications between telecommunication devices if 011 a) is in a location for accomplishing international dialing. 011 is one of a plurality of test signals used for accomplishing international dialing. Also, test results demonstrate that SWB prevents calls irrespective of the second plurality of digits. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
Claim 43	
The apparatus of Claim 42, wherein each of said signals corresponds to one of the characters 1,2, 3, 4, 5, 6, 7, 8, 9, 0, # and *.	See Claim 42. Further, SWB prevents calls when each of said signals corresponds to one of the characters 1, 2, 3, 4, 5, 6, 7, 8, 9, 0, # and *. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.

Claim 44	
The apparatus of Claim 42, wherein said telecommunications device is coupled to a telecommunications pathway and wherein said prevention means includes means for severing a connection between said telecommunications device and said telecommunications pathway.	See Claim 42. Further, SWB prevents calls by severing a connection between the device and the pathway. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
Claim 47	
Apparatus according to Claim 42, wherein said prevention means selectively prevents communications between said telecommunications device and said further telecommunications device if said third plurality of signals are determined to be at an earliest location within said plurality of signals which indicates that said plurality of signals are for accomplishing international dialing.	See Claim 42. SWB selectively prevents communications between a telecommunications device and a further telecommunications device if 011 is determined to be at an earliest location within the plurality of signals which indicates that the plurality of signals are for accomplishing international dialing. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
Claim 48	
Apparatus according to Claim 42, wherein said prevention means identifies said first plurality of signals and said second plurality of signals in order to identify said third plurality of signals.	See Claim 42. Further, SWB identifies the first plurality of signals, and the second plurality of signals in order to identify the third plurality of signals. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
Claim 49	
Apparatus according to Claim 42, wherein said second plurality of test signals which are used for accomplishing international dialing are one of a) an international access code and b) an international area code.	See Claim 42. Further, the second plurality of test signals are one of an international access code ("011") and international area code. The instrumentalities include: Public Telephone and/or SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.



## **EXHIBIT 2**

**CLAIMS CHART WITH ACCUSED INSTRUMENTALITIES**

The term SWB Switch includes Lucent 5E Switches, Lucent 1A Switches, Nortel DMS 100 Switches, Ericsson Switches and/or PBX devices owned and/or operated by SWB.

The term Public Telephone includes all public payphones owned and operated by SWB, including Smart phones, ELCO1 phones, CWEBA phones, and all phones listed on SWB003812-SWB003917.

The instrumentalities set forth below include the instrumentalities listed and similar instrumentalities.

The '650 Patent	SWB's Infringement and Accused Instrumentalities
Claim 1	
Telecommunications apparatus for selectively preventing establishment of a telephone call to a telephone number having a central office exchange code, said telecommunications apparatus being capable of transmitting a dialing sequence which includes a first plurality of dialing signals, followed by a second plurality of dialing signals followed by a third plurality of dialing signals, wherein said telephone call is placed through a telecommunications switch, said telecommunications apparatus comprising:	SWB provides services that prevent international telephone calls ( <u>See</u> Plaintiff's Amended Disclosure of Claims and Infringement Contentions at ¶ B2). The switch, through which a telephone call is placed, receives a dialing sequence. In the switch, the method then analyzes the dialing sequence, i.e. it analyzes a first plurality, a second plurality, and a third plurality, prior to a central office exchange code, and prevents calls according to the elements set forth below.
means for receiving said dialing sequence prior to receiving said central office exchange code;	SWB receives the dialing sequence prior to the central office exchange code. The instrumentalities include: SWB Switch, Input Device; and Microprocessor or Microcontroller or PC System 360.
means for evaluating said third plurality of dialing signals and for preventing said telecommunications switch from establishing said telephone call if said evaluated third plurality of dialing signals are determined to a) be in a location in said dialing sequence to accomplish international dialing and b) be respective predetermined signals which are used for international dialing irrespective of said second plurality of dialing signals.	SWB prevents the switch from establishing calls when the third plurality of signals is 011 and (a) 011 is located in the dialing sequence to accomplish international dialing and (b) 011 is a respective predetermined signal which is used for international dialing irrespective of the second plurality of dialing signals. Test results demonstrate that SWB prevents calls irrespective of the second plurality. The instrumentalities include: SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.

Claim 2	
Telecommunications apparatus according to Claim 1, wherein said means for evaluating said third plurality of dialing signals includes means for evaluating said first plurality of dialing signals and for preventing said telecommunications switch from establishing said telephone call if said evaluated third plurality of dialing signals are determined to be respective predetermined signals which are used for international dialing and if said evaluated first plurality of dialing signals are determined to be further respective predetermined signals.	See claim 1. Further, SWB prevents the switch from establishing calls when the third plurality of dialing signals is determined to be the respective predetermined signals of 011 and the first plurality of dialing signals is determined to be further respective predetermined signals of 101. The instrumentalities include: SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
Claim 3	
A method of controlling the operation of a telecommunications switch which is coupled to a telecommunications device which is capable of transmitting a sequence of signal values which includes a first plurality of digits followed by a second plurality of digits followed by a third plurality of digits followed by a central office exchange code so that a telephone call to a telephone number having said central office exchange code can be established, said method comprising the steps of:	SWB analyzes a dialing sequence that includes a first plurality, a second plurality, and a third plurality, followed by a central office exchange code.
a) receiving said sequence prior to receiving signal values corresponding to said central office exchange code;	SWB receives the dialing sequence prior to the central office exchange code. The instrumentalities include: SWB Switch, Input Device, and Microprocessor or Microcontroller or PC System 360.
b) evaluating said third plurality of digits;	SWB evaluates the third plurality of digits. The instrumentalities include: SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
c) preventing said telecommunications switch from establishing said telephone call if said evaluated third plurality of digits are determined to a) be in a location in said dialing sequence to accomplish international dialing and b) be a respectively predetermined digit sequence which is used for international dialing, irrespective of said second plurality of	SWB prevents the telecommunications switch from establishing calls when the third plurality of digits, i.e. 011, is in a location to accomplish international dialing and is a predetermined digit sequence used for international dialing irrespective of the second plurality of digits. The instrumentalities include: SWB Switch, Program Memory, and Microcontroller or

digits and	Microprocessor or PC System 360.
d) allowing said telecommunications switch to establish said telephone call if said evaluated digits are not determined to be respectively predetermined digit sequences.	SWB allows the telecommunications switch to establish calls when 011 is not located in the third plurality. The instrumentalities include: SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.
Claim 4	
A method of controlling the operation of a telecommunications switch according to Claim 3, wherein step (b) includes the step of evaluating said first plurality of digits and step (c) includes the step of preventing said telecommunications switch from establishing said telephone call if said third plurality of digits are determined to be said respectively predetermined digit sequence which is used for international dialing and said first plurality of digits are determined to be a further respectively predetermined digit sequence.	See Claim 3. Further, SWB prevents the telecommunications switch from establishing calls when the third plurality of digits, i.e. 011, is determined to be a respectively predetermined digit sequence used for international dialing and the first plurality of digits, i.e. 101, is determined to be a further respectively predetermined digit sequence. The instrumentalities include: SWB Switch, Program Memory, and Microcontroller or Microprocessor or PC System 360.

# Exhibit D

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

JOHN R. GAMMINO

PLAINTIFF,

vs.

SOUTHWESTERN BELL TELEPHONE, L.P.

DEFENDANT.

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CIVIL ACTION NO. 3-05CV-0850

JURY TRIAL DEMANDED

**BRIEF IN SUPPORT OF SOUTHWESTERN BELL TELEPHONE, L.P.'S  
RULE 37(b) MOTION TO DISMISS**

Southwestern Bell Telephone, L.P. ("Southwestern Bell") respectfully urges this Court to dismiss Plaintiff John R. Gammino's patent infringement claims under Federal Rule of Civil Procedure 37(b)(2). As Gammino's October 20, 2006 Amended Disclosure of Asserted Claims and Infringement Contentions shows, John R. Gammino ("Gammino") has again failed to comply with the Court's June 26, 2006 Order to provide Southwestern Bell with a "chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality." (Appendix at A-2.) With trial scheduled to begin in just thirty-five days on December 4, 2006, Gammino's continued violation of this Order and refusal to identify "where each element of each asserted claim is found" in any accused product or service effectively prevents Southwestern Bell from preparing for trial and from defending itself against Gammino's charges of infringement. *Id.*

Gammino has no excuse for not complying with the June 26, 2006 Order. During the September 6, 2006 claim construction hearing, the Court observed that it had already given Gammino two opportunities to comply with the Order to disclose specific infringement contentions. (A-90). The Court warned Gammino that he would get one "last shot" before the

Court would consider dismissing his claims. (A-92). On September 19, 2006, the Court entered an order requiring him to comply with the June 26, 2006 Order. Despite this unequivocal warning, Gammino's October 20, 2006 response to the September 19, 2006 order shows that Gammino has made no attempt to provide a chart that specifically identifies "where each element of each asserted claim is found" in any accused product or service. This Court should not permit Gammino to violate its rules any longer and, accordingly, should dismiss Gammino's lawsuit under Rule 37(b)(2). *See, e.g., Refac Intern., Ltd. v. Hitachi, Ltd.*, 921 F.2d 1247, 1255 (Fed. Cir. 1990).

### **Factual Background**

On June 26, 2006, the Court issued an Order requiring that Gammino provide Southwestern Bell with a chart that compared specific claim elements to specific accused products:

- c. a chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality, including for each element that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s) acts(s), or material(s) in the Accused Instrumentality that performs the claimed function.

(A-2). Gammino completely ignored this requirement when he responded to the Court's Order on July 10, 2006. Gammino's "Disclosure of Asserted Claims and Infringement Contentions" failed to accuse any specific Southwestern Bell products or services of infringement. Gammino's Claim Chart did little more than recite the claims of his patents and failed to compare any of the elements of the asserted claims to specific products or services. (A5-A23).

On August 18, 2006, in response to Southwestern Bell's May 26, 2006 motion to compel interrogatory answers, this Court issued an order that specifically found that Gammino had "not identified (1) the claims of the patents-in-suit that are allegedly infringed or (2) the

products or services of SWB that allegedly infringe those claims.” (A52). In response to this Order, Gammino served an additional set of interrogatory answers on August 28, 2006, but again failed to identify how any specific Southwestern Bell product or service allegedly infringes. (A53-A85)

On August 4, 2006, Southwestern Bell moved to compel Gammino to provide the disclosures required by the June 26, 2006 Order. The Court granted Southwestern Bell’s Motion to Compel at the September 6, 2006 claim construction hearing. During the hearing, the Court emphasized that Gammino’s infringement contentions must be specific and that Gammino would receive one “last shot” to comply with the Court’s Order before the Court would consider dismissing his lawsuit:

MR. FULGHUM: My issue is this: We still don’t know what infringes.

THE COURT: I understand that issue.

You haven’t done that? I’m going to give you 30 days. And you’ve got five days to get him that list. 30 days from that five days, you’ve got to give it. I’ve got to have a list of what infringes more specific than what you’ve got.

MR. MULLINEAUX: Your Honor —

THE COURT: You heard me today. You know how specific I want you to be. I’ve been very clear about that. You don’t get that done in 35 days I’m going to consider dismissing your claim, your case. You’ve got to do that. Do you understand that?

MR. MULLINEAUX: Yes, Your Honor. Since you —

THE COURT: I’ve given you two times already. This is going to be threes, because I think he did produce on those others things. I’m telling you, you better get serious about it. Okay?



(A89-A90). On September 19, 2006, the Court entered a written order requiring Gammino to comply in full with the June 26, 2006 Order.<sup>1</sup> (A24-A25).

Purporting to respond to the Court's September 19, 2006 Order to comply with its June 26, 2006 Order, Gammino filed an "Amended Disclosure of Asserted Claims and Infringement Contentions of Plaintiff, John R. Gammino" ("Amended Disclosures") on October 20, 2006. (A32-A51). In his Amended Disclosures, Gammino identifies a number of Southwestern Bell products and services:

- Lucent 5E Switch
- Lucent 1A Switch
- Nortel DMS 100 switch
- Dialing Plan 9
- Dialing Plan 10
- Dialing Plan 76
- Public Smart Telephones with USOC "ELC01"
- Public Smart Telephones with USOC "CWEBA"
- USOCS: 112, 852, 11K, 11Z, 12K, 12T, 12Y, 12Z, 15G, 15Y, 17O, 17W, 19Q, 19W, 1CC, 1FY, 1GP, 1GZ, 1MC, 1N8, 1NC, 1PC, 1PD, 1PN, 1PQ, 1PT, 1SP, 1UC, 1UZ, D2U, DBN, DD8, DDC, DGO, F26, G7N, TGR

(A-33). However, Gammino makes no attempt to identify "specifically where each element of each asserted claim is found within each Accused Instrumentality" as required by the June 26, 2006 Order. Instead of comparing each element of each asserted claim to each accused product and service, as required by the June 26, 2006 Order, Gammino's Claim Chart alleges generically that "SWB" infringes each claim without providing any information concerning how any specific product or service allegedly infringes. (A40-A51). Gammino's Claim Chart fails to distinguish

<sup>1</sup> The September 19, 2006 order also required Southwestern Bell to produce a list identifying each line class code applied to every payphone and a listing of the international telephone calls that each code blocks. Gammino had specifically requested this list at the September 6, 2006 hearing and told the Court that he would comply with the June 26, 2006 Order after receiving this information. (A87). The Court gave Southwestern Bell five days to produce this information and Southwestern Bell complied in full on September 22, 2006. (A26-A31). Gammino has not challenged the sufficiency of this list, although Gammino has attempted to raise new discovery issues in a subsequent motion to compel.

between different Southwestern Bell products and services and certainly does not identify “where each element of each asserted claim is found within each Accused Instrumentality as required by the June 26, 2006 Order.

### **Argument**

#### **A. Rule 37(b)(2) Authorizes Dismissal For Failure To Comply With Court-Ordered Discovery**

Federal Rule of Civil Procedure 37(b)(2) authorizes dismissal as a remedy for a party’s failure to comply with Court-ordered discovery:

If a party . . . fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

Fed. R. Civ. Proc. 37(b)(2); *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 643 (1976) (affirming dismissal of plaintiff’s lawsuit under Rule 37(b)(2) despite potential availability of lesser sanctions).

The Federal Circuit has held that Rule 37(b)(2) authorizes this Court to dismiss a lawsuit because of the plaintiff’s failure to comply with an order requiring him to identify how each accused product practices each element of the asserted claims. *Refac Intern., Ltd. v. Hitachi, Ltd.*, 921 F.2d 1247, 1255 (Fed. Cir. 1990). In *Refac*, Refac International, Ltd. (“Refac”) asserted patent infringement claims against several manufacturers of devices containing liquid crystal displays (“LCD”). Refac alleged that *any* LCD sold by these manufacturers infringed the claims of its patents, but failed to identify specifically how each accused product practiced every element of the asserted claims. The district court issued an

order compelling Refac to disclose the specific basis for its claims, including an identification of specific accused products and a specific description of “which elements of each claim are present in the accused devices.” *Id.* at 1251. Refac responded to this order by asserting again that all LCDs practiced every element of the asserted claims, but did not compare specific claim elements to specific accused products.

The district court found that Refac had “deliberately and knowingly” violated the discovery order and dismissed all of Refac’s claims under Rule 37(b)(2). In explaining the reason for its ruling, the court observed that “[i]t is not the duty of defendants . . . ‘to make their own technical analysis of infringement in order to intelligently decide whether to fight or settle.’” *Id.* at 1253. The Federal Circuit affirmed the dismissal, finding that Refac’s “inability to spell out a proper basis for charging infringement more than a year after bringing suit” demonstrated that its failure to comply with the discovery order was willful and justified dismissal. *Id.* at 1255.

**B. Gammino’s Failure To Identify How Specific Products And Services Infringe Justifies Dismissal**

Gammino has persisted for more than a year in refusing to identify how any specific accused product or service infringes. Southwestern Bell has been seeking specific information about the basis for Gammino’s infringement claims since it served its First Set of Interrogatories in October 2005 and has filed three motions to compel in an effort to require Gammino to explain the basis for his accusations of infringement. Now, on the eve of trial, and in direct violation of the Court’s June 26, 2006 Order, Gammino continues to refuse to explain *any* specific accused product or service infringes. Because Gammino has repeatedly refused to comply with the Court’s June 26, 2006 Order, this Court should dismiss Gammino’s patent infringement claims with prejudice.

**1. The facts of this case justify dismissal even more strongly than in *Refac*.**

The facts of this case justify dismissal even more strongly than in *Refac*. Unlike the court in *Refac*, this Court has twice ordered Gammino to identify specifically how each accused product or service infringes and has explicitly warned Gammino that his claims may be dismissed if he fails in his “last shot” to comply with these orders. Despite this Court’s explicit warning that failure to comply with the Court’s June 26, 2006 Order could result in dismissal of his claims, Gammino has made not attempt to identify specifically how each accused product or service infringes.

**2. Southwestern Bell is entitled to know before trial how it allegedly infringes Gammino’s claims.**

Southwestern Bell is entitled to know before trial how it allegedly infringes Gammino’s patents. The essence of Gammino’s infringement case is his contention that *specific* Southwestern Bell products or services practice every element of the asserted claims. In order to establish infringement, Gammino must prove “that every limitation of the patent claims asserted to be infringed is found in the accused device, either literally or by an equivalent.” *SmithKline Diagnostics, Inc. v. Helena Laboratories Corp.*, 859 F.2d 878, 889 (Fed. Cir. 1988). If Gammino is allowed to continue to ignore the specific requirements of the Court’s June 26, 2006 Order, Southwestern Bell will not learn before trial how each of its accused products and services allegedly infringe the asserted claims.

**3. Gammino cannot satisfy his burden of identifying how specific products and services infringe with generic allegations.**

Gammino cannot satisfy his burden of identifying how specific products and services infringe without submitting Claim Charts that address specific products and services.

Gammino's Claim Chart, however, lumps all of Southwestern Bell's products and services together into the generic allegation that "SWB" infringes without distinguishing between the specific products and services accused of infringement. (A40-A51). In treating all of the accused products and services as if they were identical, Gammino's Claim Chart provides no information that would allow Southwestern Bell to determine how Gammino plans to met his burden of showing that each accused product or service contains every element of the asserted claims.

Gammino's vague references in his Claim Chart to "Public Telephone," "SWB Switch," "Program Memory," "Microcontroller," "Microprocessor," and "PC System 360" highlight Gammino's refusal to address specific Southwestern Bell products and services. In reality, the terms "Program Memory," "Microcontroller," "Microprocessor," and "PC System 360" come from Gammino's own patents and do not describe the features of any Southwestern Bell products or services. In addition, Gammino's discussion of the terms "Public Telephone" and "SWB Switch" is simply too vague to provide any meaningful identification of how specific telephones and switches in the Southwestern Bell network allegedly infringe. Indeed, in listing forty-five Southwestern Bell dialing plans, switch types, telephones, and USOCs on page 2 of his Amended Disclosure (A-33), Gammino appears to concede that not all public telephones and SWB switches are the same, yet Southwestern Bell has no way of knowing how each of these products and services allegedly infringe.

Importantly, Gammino's Claim Chart fails to address any of the Dialing Plans and USOCs that he has accused of infringement. Despite accusing three dialing plans and thirty-eight USOCs<sup>2</sup> of infringement on page 2 of his Amended Disclosure, Gammino's Claim

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<sup>2</sup> Each USOC is uniquely associated with a dialing plan. Even though Gammino identifies just three dialing plans as infringing — Dialing Plans 9, 10, and 76 — Gammino confusingly identifies as infringing a number of

Chart provides no analysis of how these dialing plans and USOCs allegedly infringe. This failure is inexcusable because, during the September 6, 2006 hearing, Gammino specifically requested that Southwestern Bell provide him with a list of all dialing plans and USOCs that Southwestern Bell uses in its payphone network and an identification of all international telephone calls that each dialing plan or USOC blocks. (A88-A189). Southwestern Bell complied fully with this request and provided Gammino with the requested information. (A26-A31). Although Gammino told the Court during the hearing that he would comply with the June 26, 2006 Order after receiving this information, Gammino persists in attempting to avoid his obligation to explain how specific Southwestern Bell products and services infringe.

**C. Gammino Has Not Identified the Structure in Any Accused Product or Service that Performs the Function of any Means-Plus-Function Element**

For each element governed by 35 U.S.C. § 112(6) (*i.e.*, means-plus-function elements), the Court's June 26, 2006 Order requires that Gammino identify the structure in the accused device that performs the function of the means-plus-function element. Despite this unambiguous requirement, Gammino makes no attempt to identify the structure in any specific Southwestern Bell product or service that allegedly performs the function of any means-plus-function element. Instead, Gammino contends that every "SWB Switch" and "Public Telephone" is an "Accused Instrumentalities" that performs the function of each of the "means plus function" claim term without identifying any specific structure that performs each claimed function. (A40-A51).

Gammino's cannot shortcut his obligation to provide a proper means-plus-function analysis. By identifying the entirety of the accused device as performing the claimed function, Gammino effectively erases the Court's means-plus-function requirement from the

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USOCs that are not associated with Dialing Plans 9, 10, or 76, without also identifying the dialing plans associated with these USOCs as infringing. (A-33).

June 26, 2006 Order, as this portion of the Order could always be satisfied by identifying the accused product in its entirety. Gammino's generic assertion that each "SWB Switch" and each "Public Telephone" practices each means-plus-function element does not assist the Court or Southwestern Bell in understanding how Southwestern Bell allegedly infringes the means-plus-function elements of the claims.

In addition to identifying each "SWB Switch" and "Public Telephone" as the structure in the accused device that performs the function of the means-plus-function elements, Gammino also confusingly identifies the structure disclosed in his own patents as being the structure of Southwestern Bell's Accused Instrumentality that performs the function of the means-plus-function elements. For example, claim 15 includes a "means for evaluating . . . and for preventing . . . ." Instead of identifying structure in Southwestern Bell's products, Gammino identifies the structure that is set out in his patent, namely the "Program Memory, and Microcontroller or Microprocessor or PC System 360." (A-43). The identification of structure in his own patents does not comply with the Court's order, which requires in Part c that Gammino identify structure *in* the Accused Instrumentality; not structure that is described in his own patents. (A-2). Gammino's identification of the structure set out *in his own patents* does nothing to aid the Court or Southwestern Bell in identifying the structure of the accused products that allegedly infringes the means-plus-function elements of his claims.

Gammino has again violated the Court's June 26, 2006 Order with respect to the identification of structure in the accused products that performs the function of the means-plus-function elements of the claims. Because Gammino has repeatedly failed to follow the Court's June 26, 2006 Order, this Court should dismiss Gammino's claims of patent infringement with prejudice.

**D. Gammino's Amended Disclosures Identify Products and Services that were Never Identified by Gammino During Fact Discovery**

Inexcusably, Gammino waited until October 20, 2006 to accuse forty-five new Southwestern Bell products and services of infringement. Gammino failed to identify any of these specific products and services in response to this Court's June 26, 2006 and August 18, 2006 orders requiring him to identify infringing products and services:

- Lucent 5E Switch
- Lucent 1A Switch
- Nortel DMS 100 switch
- Dialing Plan 9
- Dialing Plan 10
- Dialing Plan 76
- Public Smart Telephones with USOC "ELC01"
- Public Smart Telephones with USOC "CWEBA"
- USOCS: 112, 852, 11K, 11Z, 12K, 12T, 12Y, 12Z, 15G, 15Y, 17O, 17W, 19Q, 19W, 1CC, 1FY, 1GP, 1GZ, 1MC, 1N8, 1NC, 1PC, 1PD, 1PN, 1PQ, 1PT, 1SP, 1UC, 1UZ, D2U, DBN, DD8, DDC, DGO, F26, G7N, TGR

(A-33). Gammino's last-minute identification of forty-five new accused products and services on the eve of trial severely prejudices Southwestern Bell, especially when Gammino refuses to identify how each of these new products and services infringes. Because fact discovery is closed, Southwestern Bell will have no opportunity to conduct any discovery concerning the basis for Gammino's new infringement allegations.

Gammino has no excuse for waiting until the last minute to serve infringement contentions. Gammino filed this lawsuit in April 2005, his answers to Southwestern Bell's First Set of Interrogatories (which requested an identification of any accused products and services) were due in November 2005, and this Court's June 26, 2006 and August 18, 2006 discovery orders required him to identify accused products and services well before the close of fact discovery. Gammino has had ample time to identify accused products and services, but refused to do so until this Court threatened to dismiss his claims. Gammino's late identification of these



products and services on the eve of trial is inexcusable. This Court should not allow him to make new allegations of infringement when fact discovery has long since closed.

**Conclusion**

For the foregoing reasons, Southwestern Bell requests that this Court dismiss Gammino's patent infringement claims with prejudice under Federal Rule of Civil Procedure 37(b)(2).

Date: October 30, 2006

Respectfully submitted,

/s/ Jonathan Rubenstein

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served upon all counsel of record via the Court's electronic filing system on October 30, 2006.

/s/ Jonathan Rubenstein  
Jonathan Rubenstein